

16: Müller--235-236
116, 671, 673, 681

U-3

(no date) 1910

Formosan Aborigines

The concept of crime is not unknown among the natives. They judge misdemeanors according to ancient traditions; action is considered a moral offense if it is not in accordance with the principles held by the community as a whole. There is no written law; the punishment for each crime is [236] considered individually. No form of punishment, however, may exceed a certain degree of severity. Sometimes the offender may pay a fine to take the place of the punishment designated.

16: Müller--236

U-3

(no date) 1910

Formosan Aborigines

116, 681, 628

Tayal

Among the Ataiyal aborigines the following are the chief forms of punishment:

1. A small fine, for offenses such as trespassing in the fields.
2. Beating, used chiefly for personal insults. This may be administered symbolically, by striking the offender's arm very gently, or actually, with sticks.
3. Capital punishment, chiefly applied if the offender has murdered a relative or committed adultery, etc.
4. Confiscation of property and plundering of houses, applied against an entire tribe.

21: Asai--8 [2]
116, 681

L-5

(1935-46) 1950

Formosan Aborigines

"Enforcing of the laws. Penalties for breaking the laws are fixed. The injured person gets the amount of the penalty. If the crime was committed against the whole group, they all share in the penalty."

22: Wiedfeldt--28 [3]
116, 681

F-5

(1913) 1914

Formosan Aborigines
Atayal

Penal usage is for the most part highly developed among the Atayals, just as it forms the part of the law which was codified long ago among the Chinese.

22: Wiedfeldt--28 [7] F-5
116, 681, 574, 692

(1913) 1914

Formosan Aborigines
Atayal

The fine is considered something not good, and is therefore spept by the clan or the family that receives it for a clan feast, the schukun [MC: the ornamented clothing with which the fine was paid.] being exchanged for a pig or for sake. In many tribes, the clan chief keeps the fine and adds it to a fund out of which he occasionally pays fines.

22: Wiedfeldt--41
116, 609, 681, 721

F-5

(1913) 1914

Formosan Aborigines
Atayal

Their penal law is based on the principle that every infraction of a legal usage must be punished. Conscious striving after justice is foreign to the Atayals, as far as I can determine. They want to restore conditions which have been upset by the offense to their proper place by means of expiation. They recognize infractions of the law only within the tribe. Adultery with a woman who does not belong to the tribe does not trouble any member of the tribe. To kill a man who belongs to another tribe or even to another people, confers prestige as a head-hunter. I myself have heard an Atayal boast in the presence of the Japanese police commissioner, who had been in office for 13 years in the border territory, that he had stolen a pig from a Chinese the night before. Neither do they consider it objectionable to pick bananas from a neighbor's field as they pass by.

22: Wiedfeldt--41-42
116, 674, 681

F-5

(1913) 1914

Formosan Aborigines-1-2
Atayal

Recognized legal customs are seldom violated by the Atayals. In the course of two years there were said to have been in one tribe one case of adultery, three thefts, and four murders. These three types of offenses against the law are recognized by them, and so they protect the most important social principles: life, family, and property. They punish adultery more severely than is customary in modern times, because of the high esteem in which the family is held...and because of their solidarity with the injured member of the clan. The Atayals, like ourselves, distinguish three kinds of offenses: a delict--to use our expression--for example, killing a person in the hunt; a misdemeanour, for example, the killing of a member of the tribe; a crime, for example, the killing of a member of the clan. They have three corresponding degrees of punishment: a fine, compensation derived from the offender's property by means of a fine or burning his hut, and the death penalty, from which there is no appeal. It is less surprising that they do not know anything about depriving a person of freedom as a means of punishment, --which would be difficult to do, anyway, --than that they have not adopted the practice of corporal punishment in spite of the fact that they have long been neighbors of the Chinese. If the fine is not paid, the death penalty is applied. After all, that failure to pay the fine is a sign that the members of the clan reject the criminal. The punishments may be accumulated, for example, in the case of adultery. Since the punishment is an attempt to settle and avenge the offense, it almost always includes a fine paid to the injured party or to his clan. [42] It is not a fixed sum, but is adjusted

22: Wiedfeldt--41-42

F-5

(1913) 1914

Formosan Aborigines-2

116, 674, 681

Atayal

according to the demands of the clan, the seriousness of the offense, and the capacity of the offender to pay. Finer legal distinctions of other kinds are not unknown to the Atayals, for example, premeditation, mitigating circumstances, or the distinction between adultery on the part of the woman and adultery on the part of the man, a distinction which has been obliterated in modern times...

22: Wiedfeldt--45 [2]
116, 614, 671, 681, 696

F-5

(1913) 1914

Formosan Aborigines
Atayal

The execution of the decision arrived at [MC: in criminal cases] is simple. The clan always bows to the decision in the presence of the chief of the tribe; an individual family, or a single individual almost always does so. If necessary, the clan uses force, or de-bars a disobedient member from the clan. The injured clan always receives the fine which is due it, even though the clan which is obligated to pay can not always get it from the guilty member, which after all does not mean very much in view of the solidarity of the members of the clan. Thus, the Atayals have a well developed system of criminal law, they possess the most important basic institutions of civil law, and they have orderly legal procedure.

Administration of justice among the natives.

When peoples live as simply as the mountain natives of Formosa, they obtain practically everything that they need from nature, and so there is no necessity or even a desire to possess more than they need for the present day. Accordingly, there are no quarrels such as those which arise about property and possessions when people live close together and have to struggle to meet their daily needs. If a private disagreement arises about a piece of property, the whole native community is not disturbed, but leaves it to the wronged individual to take care of the matter. Some of the Formosan tribes, such as the Vonum in the central part of the island, say that there is no theft whatsoever, and that it is not a question of stealing to take fruits and vegetables which others have gathered. Other tribes, however, which engage in tilling the soil as well as hunting, have domestic animals and many valuable objects. There are rich and poor citizens, and they know the meaning of property infringements. In all of the tribes, however, there are certain actions which are regarded as an insult against their conception of law and as a disturbance of public order, and so these cannot be tolerated. In conformity with these ideas, some form of controlling and punishing these illegal actions has been devised. According to the prevailing views, the same deed may be judged a light or a severe offence by the different tribes, and the punishment will be a mild or a stringent one.

Administration of justice is always in the hands of the chief.

The chief examines the question, listens to the parties and some witnesses, and gives a verdict. Sometimes he puts his sentence into effect at once, or he may let the victim or his family attend to it. In doubtful cases, when there is no other way to reach a decision, the natives invoke the gods. In other words, the deceased ancestors of the contending parties are invoked to make the decision. There are two ways of obtaining this decision--they are head-hunting and single combat. Head-hunting is organized in this manner: the two opponents, who are frequently accompanied by their friends, go out separately and attack Chinese peasants who are working alone in the field, or they attack unprotected settlements, and then they behead those people whom they can overpower. The group which comes back with one, or several, or with the largest number of heads has won the suit. [40] The duel is fought by the two opponents, or, if one of them is accused of murder, it is between the accused and the accuser, who is usually a relative of the murdered man. They fight until one of them kills the other and cuts off his head. This indicates that the ancestors have given the victor strength to vanquish his opponent, and this demonstrates the innocence or justice of his accusation--the guilty man has received his punishment.

The affair is more serious when the opponents belong to different tribes. The chiefs generally try to reach a peaceful settlement, but they do not always succeed, and then there is no other recourse but to settle the quarrel by battle between the two tribes.

25: Plaut--40

U-4

(no date) 1903

Formosan Aborigines

116, 622, 681, 692

The chief's decision is invoked when there is a murder, in cases of adultery and seduction, theft, calumny, and quarrels. Nearly all of the tribes believe that each act has its price, and that if the guilty man pays this price, he can be exonerated from all blame. In many tribes it is left to the victim to decide whether he will accept the money, or whether he prefers the revenge.